

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action
No. 11-10299-DJC

V.

May 21, 2012

DONDRE SNOW,

Defendant.

TRANSCRIPT OF STATEMENT OF REASONS

BY THE HONORABLE DENISE J. CASPER

UNITED STATES DISTRICT COURT

JOHN J. MOAKLEY U.S. COURTHOUSE

1 COURTHOUSE WAY

BOSTON, MA 02210

DEBRA M. JOYCE, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
1 Courthouse Way, Room 5204
Boston, MA 02210
617-737-4410

* * * * *

THE COURT: Counsel, Mr. Snow, thank you for your patience.

I want to thank counsel for their arguments on both sides today, certainly gave me a lot to think about, and as I indicated at the beginning, I had an opportunity to review the PSR at length and the government's submission and everything in the record before me.

In consideration of what a reasonable sentence would be here, Mr. Snow, I must consider, and I have considered, a range of factors: the advisory guideline sentencing range under the sentencing guidelines; the nature and circumstances of the crime charged here; your personal history, including your family background, upbringing, and criminal history and characteristics; the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment and adequate deterrence, that is, to deter you and others from committing the same or similar crimes and to avoid unwarranted sentencing disparities; and all of the factors under Title 18, United States Code 3553(a).

Mr. Snow, I want to start with the crime that you committed in this case. As I think is undisputed at this point, on June 7, 2011, in the Warren Gardens housing development, you negotiated on the phone with a cooperating witness who was working with federal and state agents who was

1 looking to buy cocaine, and you sold him five Baggies of
2 cocaine in the courtyard there at Warren Gardens when he showed
3 up to consummate the deal. One of the Baggies contained .16
4 grams of cocaine, and there's no dispute by the government that
5 the amount of cocaine involved in this, and even the other
6 uncharged offenses, was less than 25 grams.

7 You also stood ready, willing, and able to sell to
8 this cooperating witness on two occasions, on June 15th and
9 June 20th of 2011, a short time after the charged conduct here.
12:08 10 The later of those two dates you never delivered any drugs,
11 although you did take the CW's money for drugs.

12 Neither of those transactions is charged here, and the
13 government's acknowledged that the inclusion of even the deal
14 where the drug sale was completed would not exceed the 25-gram
15 amount. Nonetheless, the Court should -- and I can't ignore
16 this relevant information as I consider what a reasonable
17 sentence would be here.

18 Mr. Snow, sadly for a person so young, my
19 determination of an appropriate sentence here turns
12:09 20 significantly on your criminal record, that is not just a
21 pattern of drug dealing that's reflected in the charge and
22 uncharged conduct here, but in the criminal record that you've
23 already amassed. I believe you turned 19 in March of this
24 year, and, yet, your Criminal History Category is already in
25 Category IV.

1 Between the ages of 13 and 18 when you were charged
2 with this crime, you'd committed numerous other offenses that
3 had earned you multiple adjudications in juvenile court and a
4 DYS commitment until your 18th birthday, which I think was
5 extended to your 21st birthday in light of the offenses in this
6 case and in light of your state charges that are pending in
7 state court.

8 A few of those underlying offenses were serious
9 offenses of being a felon with a dangerous weapon and
12:10 10 threatening in 2006, and the unarmed robbery and assault and
11 battery charge for which you were adjudicated delinquent in
12 2010 and which you were still under at the time you committed
13 the offense in this case.

14 Moreover, after you committed the offense in this case
15 in June of last year, before you were indicted here in
16 September, you were charged with another serious offense, which
17 counsel on both sides has referred to here, which involved a
18 loaded firearm.

19 Now, clearly that case has not been adjudicated. I
12:10 20 don't know what the outcome of that case will be, but certainly
21 for my consideration what's significant is that it occurred in
22 the same area, the Warren Gardens area, in which you committed
23 the instant offense.

24 Your criminal history here is certainly a driving
25 factor, but it's not by any means the only factor I've

1 considered. I have thought long and hard about your personal
2 background and your upbringing. You literally did not have a
3 great start in life, having been born addicted to cocaine as
4 the child of a drug addict. I think it's fair to say you've
5 had no meaningful or sustained relationship with either of your
6 biological parents, and your adoptive mother, Ms. Snow, who
7 raised you and clearly still supports you, has acknowledged her
8 own substance abuse issues during your childhood.

9 You also have a diagnosis of ADHD and were medicated
10 and received counseling for that issue, as well as for other
11 behavioral issues in school. And I don't think counsel on
12 either side disputes that you may have some cognitive
13 difficulties that have not been fully diagnosed and certainly
14 will be reflected in the conditions of supervised release that
15 I impose.

16 The government, Mr. Wortmann, has made much of your
17 alleged gang affiliation in the filings and in arguments today.
18 I certainly think there's some credible evidence in the record
19 from the BPD records of past arrest reports to support the
12:12 20 position that you are a member of the Warren Gardens street
21 gang, but I don't need to make a finding about that affiliation
22 per se, and I don't, to conclude that you've continually
23 associated with the wrong people. I think your mother
24 acknowledged as much in her interview with the Probation
25 Department. And you particularly associated with the wrong

1 group of people in Warren Gardens, your former home, and the
2 site of the crime in this case.

3 All this to say that I think a sentence at the
4 midpoint of the applicable guideline sentencing range, 24
5 months, is a reasonable sentence. It's not just because of
6 your personal history and characteristics and the nature of the
7 offense charged here, but also because of the need for just
8 punishment for the crime and specific and general deterrence,
9 although I have to say it's more about specific deterrence for
10 me in this case.

11 Mr. Snow, I'm very concerned that you're on the wrong
12 path. The seriousness and frequency of your crimes, I think,
13 has increased; and even while you were in the custody of DYS
14 for serious crimes, you committed the serious crime charged in
15 this case, and now stand charged with a firearms offense, which
16 I believe carries a minimum mandatory sentence.

17 In terms of the issue of concurrent versus consecutive
18 time, I am going to impose the 24-month sentence concurrent
19 with your DYS commitment but consecutive to any state sentence
20 to be imposed on a pending state firearms charge. Under Title
21 18, United States Code 3584, in light of the Supreme Court's
22 recent decision in the Setser case, that's S-e-t-s-e-r, v.
23 United States, 132 S. Ct. 1463 (March 28, 2012), gives me
24 discretion to impose the sentence both concurrent with DYS
25 custody and consecutive to any state sentence, and I think it's

1 appropriate to impose the sentence in that way. I think the
2 offense charged here, which was on June 7th of 2011, was
3 separate, distinct, and apart from the conduct which I
4 understand you're charged with in state court, which arises out
5 of your August 2011 possession of a firearm.

6 I also think, it's my understanding, and I think
7 counsel on both sides here was in agreement, that if for some
8 reason the state charge goes away, Mr. Snow, you end up either
9 acquitted of the state charge or for some other reason the
10 state charge is dismissed, that you would get federal credit
11 for the time you've served in state custody on that charge.

12 I also want to briefly address some of the conditions
13 of supervised release that I asked both Mr. Wortmann and
14 Mr. Fick, your counsel, about.

15 In regards to the geographic restrictions, the
16 associational restriction and the curfew, as well as all of the
17 other condition, I understand it's in my discretion under, I
18 believe it's 3584 -- excuse me -- 3583 to impose discretionary
19 conditions, as long as they're reasonably related to the goals
20 of sentencing under 3553, including, but not limited to,
21 related to, reasonably related to adequate deterrence and
22 protection of the public from future crimes of the defendant,
23 involve no greater deprivation of liberty than is reasonably
24 necessary for those purposes, and is consistent with any
25 pertinent policy statement under the guidelines.

1 As to the associational restriction, I think there's
2 no objection to that condition, but I find it meets all of
3 those conditions, and is certainly consistent with the policy
4 statement under 5D1.3(c)9 about defendants not associating with
5 any persons engaged in criminal activity or who are convicted
6 felons.

7 As to the geographic condition, as I suggested on the
8 record in my questions to both counsel, I had some concerns
9 about your ability to understand and comply with those
12:17 10 conditions, but I think, one, that Probation will take care to
11 explain the geographic restriction to you, and at the end of
12 the day, if there's any violation of that condition, you're
13 going to appear before me, and I can decide whether or not it's
14 an inadvertent or an intentional violation.

15 Also, in regard to the curfew, I know Mr. Fick
16 objected on your behalf to imposition of a curfew of 9:00 p.m.
17 to 6:00 a.m. during the first year of your supervised release,
18 but I do think it's appropriate to impose that condition, at
19 least to start. There's nothing limiting Probation to moving
12:18 20 to revise that condition or to allow you to move to revise that
21 condition should you find employment that requires you to be
22 out and about beyond 9:00 p.m.

23 The other thing I should say about all three of these
24 conditions is that none of them is absolute. I think the
25 guidance from the 1st Circuit has been that conditions like

1 this that are reasonably related to the goals of sentencing are
2 appropriate, particularly when they're not absolute and there's
3 language written in that they can be revised with the prior
4 expressed permission of Probation. And as I said, any
5 violation would come before this Court, this session of the
6 court again.

7 Accordingly, for all these reasons, and having
8 considered all of the 3553 factors in a holistic manner,
9 including, as I said before, your personal history, the
10 seriousness of the offense, the need for just punishment, and
11 deterrence, I shall impose a sentence of 24 months within the
12 advisory guideline sentencing range.

13 I note for the record I understand I have the
14 discretion to vary or depart from the guideline sentencing
15 range and impose a lesser sentence, like the one Mr. Fick
16 advocated for, but I choose not to exercise my discretion in
17 that manner.

18 Based on my discretion and consideration of the
19 3553(a) factors, I conclude that a 24-month sentence is a
20 reasonable one, based upon the facts and circumstances of this
21 case, and is sufficient and not greater than necessary to
22 accomplish the goals of sentencing.

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